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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
8

9 MARSHA M. AYCHILLHUM,

10 Plaintiff,

11 vs.

12 ROGER LEE HEARTHLY

13 Defendant.

14 CASE NO. 14CV2788-MMA (RBB)

15 **ORDER:**

16 **GRANTING PLAINTIFF'S**
17 **MOTION TO PROCEED IN**
18 **FORMA PAUPERIS**

19 [Doc. No. 2]

20 **SUA SPONTE DISMISSING**
21 **ACTION FOR LACK OF SUBJECT**
22 **MATTER JURISDICTION**

23 [Doc. No. 1]

24 **DENYING AS MOOT PLAINTIFF'S**
25 **REQUEST FOR COURT TO**
26 **APPOINT COUNSEL**

27 [Doc. No. 3]

28 Plaintiff Marsha Aychillhum, proceeding pro se, has filed a complaint in
federal court against Defendant Roger Lee Hearthly. *See* Doc. No. 1. Concurrently,
Plaintiff filed a motion requesting to proceed *in forma pauperis* ("IFP") as well as a
request for appointment of counsel. *See* Doc. Nos. 2, 3.

29 **MOTION TO PROCEED IN FORMA PAUPERIS**

30 A party instituting any civil action, suit or proceeding in a district court of the
United States, except an application for writ of habeas corpus, must pay a filing fee

1 of \$400.¹ *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's
 2 failure to prepay the entire fee only if the plaintiff is granted leave to proceed in
 3 forma pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d
 4 1176, 1177 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not a
 5 right." *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

6 A party need not be completely destitute to proceed in forma pauperis.
 7 *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). But "the
 8 same even-handed care must be employed to assure that federal funds are not
 9 squandered to underwrite, at public expense, either frivolous claims or the
 10 remonstrances of a suitor who is financially able, in whole or in material part, to pull
 11 his own oar." *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984). Based on
 12 the information provided by Plaintiff in support of her IFP motion, the Court
 13 **GRANTS** Plaintiff's motion to proceed in forma pauperis.

14 **SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

15 When a plaintiff proceeds IFP, the complaint is subject to mandatory
 16 screening and the Court must order the *sua sponte* dismissal of any case it finds
 17 "frivolous, malicious, failing to state a claim upon which relief may be granted, or
 18 seeking monetary relief from a defendant immune from such relief." 28 U.S.C. §
 19 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) ("[T]he
 20 provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners."). Federal
 21 Rule of Civil Procedure 12(h)(3) permits a district court to dismiss a complaint *sua
 22 sponte* for lack of subject jurisdiction. Fed. R. Civ. P. 12(h)(3).

23 Federal courts have limited jurisdiction, and thus, can only hear certain types
 24 of claims that the Constitution or Congress has authorized them to adjudicate.
 25 *Kokkonen v. Guardian Life Ins. Co. Of America*, 511 U.S. 375, 377 (1994). For

26
 27 ¹ In addition to the filing fee of \$350, the District Court Miscellaneous Fee
 28 Schedule, effective May 1, 2013, requires payment of an administrative fee for filing
 a civil action in district court of \$50. *See* 28 U.S.C. § 1914(a) and District Court
 Miscellaneous Fee Schedule, note 14. However, the \$50 administrative fee is waived
 if the plaintiff is granted leave to proceed IFP.

1 example, common bases for federal jurisdiction include actions: that present a
 2 federal question (28 U.S.C. § 1331); where there is diversity of citizenship among
 3 the parties (28 U.S.C. § 1332); or based on statute that regulate specific subject
 4 matters such as civil rights, antitrust, copyright, and trademark. Therefore, “[i]t is
 5 presumed that a cause lies outside this limited jurisdiction, and the burden of
 6 establishing the contrary rests upon the party asserting jurisdiction. *Kokkonen*, 511
 7 U.S. at 377.

8 The well-pleaded complaint rule governs whether federal jurisdiction exists.
 9 *Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern*
 10 *Cal.*, 463 U.S. 1, 9–11 (1983). The well-pleaded complaint rule is a “powerful
 11 doctrine [that] severely limits the number of cases in which state law ‘creates the
 12 cause of action’ that may be initiated in or removed to federal district court . . .” .
 13 *Id.* at 9–10. Under this rule, the federal question must be “presented on the face of
 14 the plaintiff’s properly pleaded complaint.” *Id.*; *accord Wayne v. DHL Worldwide*
 15 *Express*, 294 F.3d 1179, 1183 (9th Cir. 2002). In this case, Plaintiff has not
 16 established that her complaint is properly before this Court.

17 First, to bring an action in federal court based federal question jurisdiction, the
 18 complaint must establish either that federal law creates the cause of action or that the
 19 plaintiff’s right to relief necessarily depends on the resolution of substantial
 20 questions of federal law. *Franchise Tax Board*, 463 U.S. at 10–11. Here, Plaintiff
 21 indicates on the civil cover sheet that jurisdiction in this Court is based on a federal
 22 question and further identifies the nature of the suit as “Other Contract.” However,
 23 in looking to Plaintiff’s complaint, the Court finds that a federal question is not
 24 presented on the face of Plaintiff’s complaint. *See* Doc. No. 1-2. Although it is not
 25 entirely clear, Plaintiff appears to bring her complaint to recover certain funds under
 26 California law based on an “implied contract between nonmarital cohabitants.”
 27 Compl. at 2. Thus, contrary to Plaintiff’s assertion, the complaint does not present a
 28 claim based on federal question.

1 This leaves diversity of citizenship as the only available basis of jurisdiction
2 in this Court. A federal court also has jurisdiction over an action involving citizens
3 of different states when the amount in controversy exceeds \$75,000. 28 U.S.C. §
4 1332. Here, Plaintiff seeks to recover a bank account that has purportedly
5 accumulated \$21 million, which satisfies the amount in controversy requirement.
6 However, the parties are not citizens of different states. *See* 28 U.S.C. § 1332;
7 *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 76 (1996). Although Plaintiff does not
8 include allegations of either party's citizenship in the complaint itself, she indicates
9 on the civil cover sheet that she and Defendant are both citizens of California and
10 residents of San Diego County. Accordingly, there is no diversity of citizenship
11 among the parties, and the Court does not have diversity jurisdiction in this matter.

12 The Court finds that it lacks subject matter jurisdiction over this action.
13 Accordingly, the Court **DISMISSES** Plaintiff's complaint for lack of subject matter
14 jurisdiction. In light of the Court's conclusion that it lacks subject matter
15 jurisdiction, it **DENIES as moot** Plaintiff's request for appointment of counsel.

16 **CONCLUSION AND ORDER**

17 For the reasons set forth above, the Court **ORDERS** as follows:

- 18 (i) The Court **GRANTS** Plaintiff's Motion to Proceed IFP [Doc. No. 2];
19 (ii) The complaint is **DISMISSED** sua sponte under 28 U.S.C. §
20 1915(e)(2)(B) for lack of federal subject matter jurisdiction.
21 (iii) In light of the Court's finding that it lacks subject matter jurisdiction,
22 Plaintiff's request for appointment of counsel is **DENIED as moot** [Doc. No. 3].

23 **IT IS SO ORDERED.**

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25 DATED: November 24, 2014

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28 Hon. Michael M. Anello
 United States District Judge